

Resident Rights Basics and Stimulus Checks FAQs



Please note: The following content is for informational purposes only. It is not to be interpreted as legal advice and the information contained is not necessarily applicable to your specific case.

Economic Impact (Stimulus) Payment Basics

- Payment programs may be referred to as “stimulus,” “economic impact payments,” “COVID relief funds,” or “EIPs.”
- Administered as an IRS tax credit
 - Do NOT need to be paid back on future tax returns!
- Eligibility was determined by tax filings in 2020 (for 2019 tax year) and 2021 (for 2020 tax year), but can be affected by events in tax years 2020 and 2021

Economic Impact (Stimulus) Payment Basics

- Amounts of the payment are determined by annual income and vary between payment rounds
 - 1st 2020 EIP - \$1,200 per person and \$500 per dependent (aged 0-16) for individuals making up to \$99,000 per year and married couples filing jointly making up to \$198,000 per year – phase out after these income limits.
 - 2nd 2020 EIP - \$600 per person and \$600 per dependent (aged 0-16) for individuals making up to \$75,000 per year and married couples filing jointly making up to \$150,000 per year – phase out after these income limits.
 - 2021 EIP - \$1,400 per person including dependents of any age for individuals making up to \$80,000 and married couples filing jointly making up to \$160,000 per year – phase out after these income limits.

EIP FAQs

- I'm a nursing home resident – am I entitled to an EIP?
 - Yes – if you are otherwise eligible, being a resident in a nursing home does not disqualify you from receiving a payment.
 - Nursing homes cannot take residents' EIPs, even if the resident is receiving Medicaid or SSI.
 - The Long Term Care Ombudsman Program can assist residents and their families with issues caused by nursing homes and EIPs.
- I have a rep payee for my government benefits – am I entitled to an EIP?
 - Having a rep payee – either a private individual or a government agency such as APS - does not disqualify you from receiving a payment.
 - If your government benefits are direct deposited into an account managed by your rep payee, your EIP may go there as well. However, this money legally belongs to you, so you are entitled to decide how it is spent.
 - If you want to spend this money independently of your rep payee, then the rep payee should turn it over to you. If you want your rep payee's help in spending this money, they can assist you with that.

EIP FAQs

- Will receipt of an EIP affect my eligibility for Medicaid, SSI, SNAP or other benefits?
 - No. An EIP is not considered income in the month it is received. It is also not considered a resource for 12 months after it is received. As long as you spend your EIP money within 12 months of receiving it, your need-based benefits will not be affected.

EIP FAQs

- What if I don't file taxes – how can I get my payment?
 - If you receive benefits from Social Security, the Railroad Retirement Board, or the Veteran's Administration, your information from these programs is used to determine your eligibility even if you do not file taxes. The IRS used the direct deposit information from these benefits programs, and in some cases pre-paid debit cards mailed directly to payment recipients, to pay these stimulus payments.
 - If you didn't receive the 1st or 2nd EIP but were eligible, you can file a 2020 tax return and claim the 2020 Recovery Rebate Credit.
 - Low Income Tax Clinics are available to assist filers – visit taxpayeradvocate.irs.gov for more information
 - If you didn't receive the 3rd EIP but were eligible, you can use the “Get My Payment” tool on the IRS website to track payment status and request a missing payment.
 - [Irs.gov/coronavirus/get-my-payment](https://irs.gov/coronavirus/get-my-payment)
 - CELJ's Senior Legal Advice Helpline may be able to assist in tracking these payments or using the online tools!

EIP FAQs

- What if I'm claimed as a dependent on someone else's tax returns?
 - People over age 17 who are claimed as dependents on another person's tax returns are not eligible to receive any payments under the 1st and 2nd EIP programs.
 - Dependents of all ages are eligible to receive payments under the 3rd EIP program if the person claiming them is eligible to receive an EIP, but the dependent payment would have gone to the filer claiming you as a dependent.

EIP FAQs

- I didn't get a payment and the IRS says I'm not eligible – why is this?
 - Certain individuals are not eligible for stimulus payments. These include:
 - People over age 17 who are claimed as dependents on someone else's return (1st and 2nd EIPs)
 - Undocumented immigrants and documented “nonresident aliens”
 - Households with mixed immigration status (1st and 2nd EIPs)
 - Under 3rd EIP program, households containing at least one member with a Social Security Number “valid for employment” may be eligible for EIPs
 - Victims of identity theft involving a bad actor who filed taxes in that individual's name may be told initially that they are not eligible. Upon proof that the identity theft occurred, the IRS will give EIPs to otherwise eligible individuals.
- I added a dependent in 2020 who wasn't listed on my 2019 tax returns (or in 2021 who wasn't listed on my 2020 tax returns). How do I get the EIP for those dependents?
 - You will have the option to receive EIP payments for these dependents on your next yearly tax filing.

EIP SCAMS

- Watch out for any of the following situations!
 - Someone contacts you and offers to help you get your EIP for a fee
 - Someone tells you that they can make you eligible for the EIP for a fee
 - Someone tells you to provide personal information to any entity other than the IRS in order to receive your EIP
 - Someone tells you that your EIP is “frozen” due to outstanding criminal charges, warrants, or for any other reason
 - You receive an EIP but you know that you are not eligible for the program
 - Someone other than the IRS tells you that you need to repay or return your EIP

Senior Financial Safety Tool

- The Senior Financial Safety Tool is a web-based app that allows community partners to screen older adults for signs of potential financial exploitation.
- Older adults may also self-screen for risk of financial exploitation.
- <https://probononet.neotalogic.com/a/sfst>
- Telephone screening also available on Tuesdays from 12:00pm – 2:00pm
 - 1-833-646-1401 (toll free)

SNF Resident Right: Manage Finances

Resident Rights

- Manage your own financial affairs
- Have information about available services and charges for each service provided by the nursing home
- Personal funds of more than \$100 (\$50 for Medicaid recipients) deposited by your nursing home in a separate interest-bearing account
- Financial statements quarterly or upon request
- Not to be charged for services covered by Medicaid or Medicare

Facility Duties

- If a resident chooses to deposit personal funds with the facility, the facility must act as a fiduciary of those funds and hold, safeguard, manage, and account for the funds deposited by the resident with the facility.
- It is the facility's responsibility to ensure residents have access to their funds. This means, such resident requests must be honored by facility staff as soon as possible, but no later than:
 - The same day for amounts less than \$100 (\$50 for Medicaid residents); or
 - Three banking days for amounts of \$100 (\$50 for Medicaid residents) or more.

SNF Resident Rights: EIP

- To receive and spend the EIP as you see fit. It is prohibited for nursing homes to seize resident stimulus payments to pay for debts or any other reason.
 - No limitations on how to use these funds
 - Residents may want to buy: A cellphone or telephone, television or other electronics, personal internet access, clothing, books, etc.
 - Residents may be at risk for financial exploitation and other abuse. May want to avoid spending the payment on items that would count as a resource and potentially impact Medicaid eligibility (e.g. collectible coins).
- Access to the EIP funds if kept with the facility
 - If a resident chooses to withdraw the entire payment of any EIP, the facility must provide the resident with the full amount within three banking days. (It should be noted that unless the resident is going to quickly spend the money, doing this is risky.)

Other considerations:

- If a resident has a representative with legal access to the EIP (e.g. Guardian or Power of Attorney), that representative should act within the scope of their legal authority and spend the payment as the resident directs (if able) or as the resident would have wanted
- If a resident no longer has capacity and does not have a Guardian, Power of Attorney, or active family to direct how to spend the payment, the facility should spend the money on items in a manner the resident would have wanted or in a way to benefit the resident if that is unknown (e.g. music therapy or a robotic therapy pet).

CELJ FAQ for SNF Residents: <https://elderjusticenyc.org/wp-content/uploads/2021/01/Fact-Sheet-Stimulus-Check-Payments-and-Nursing-Home-Residents.pdf>

What About Representative Payee?

- A representative payee or, “rep payee,” is a person who acts as the receiver of United States Social Security Payments (Including Disability or Supplemental Security Income) for a person who is not fully capable of managing their own benefits.
- It is common for nursing homes to act as representative payee for their residents and they may not be aware that it is prohibited to seize EIPs to pay for debts or for any other reason.
- Rep payees do not have the right to spend EIPs as they do with the social security payments they receive on behalf of residents.

Example: Adult Protective Services (APS) Seizing an EIP

- CELJ recently made aware of a resident whose EIP was withdrawn from their facility account
- Eventually revealed that APS requested the funds as they were the designated Rep Payee
- APS did not have the right to seize those funds. They are intended for the resident to spend as they see fit. If the resident chooses to allow or request that APS to hold those funds, as Rep Payee they should work with the resident to help them spend the funds as they would like.

What if I can't find my EIP?

If a resident does not know what happened to their stimulus payments they can:

- Request/obtain a copy of their financial accounting with the facility

If residents find that their EIP has been wrongfully seized by their facility, they may consider sharing a CELJ FAQ on the topic with staff members or administration. CELJ Stimulus Check FAQs are available online along with other useful resources at: <https://elderjusticenyc.org/resources/long-term-care-resources/>.

If residents need further assistance with obtaining a copy of their financial accounting or recovering improperly seized EIPs, they may wish to contact:

- The Long-Term Care Ombudsman Program
 - 716-817-9222
- The New York State Attorney General Consumer Complaint Hotline
 - 1-800-771-7755

Where to turn if there is a complaint?

Long-Term Care Ombudsman Program

- Federally mandated program in every state
- Ombudsman are resident advocates and assist residents in nursing homes
- They help to investigate and resolve quality of care complaints on behalf of residents
- They can participate in care plan meetings and speak on the residents behalf if the facility is not helping with discharge planning
- Region 15 LTCOP: 716-817-9222 (Chautauqua, Cattaraugus, Erie, Niagara)
- State LTCOP: 1-855-582-6769; <https://ltcombudsman.ny.gov/>

Where to turn if there is a complaint?

NYS Attorney General Medicaid Fraud Control Unit

- Investigates and prosecutes abuse and neglect of residents in nursing homes
- To report resident abuse or neglect with the MFCU:
- Complete the MFCU Comment Form: <https://ag.ny.gov/comments-mfcu>
- Albany Office: 1-800-771-7755
- Buffalo Office: 716-853-8500

Where to turn if there is a complaint?

NYS Department of Health

- Investigates complaints and incidents for nursing homes and adult care facilities that are related to Federal and/or State regulatory violations
- Has the ability to issue citations and fines for violations
 - For nursing homes:
 - <https://www.health.ny.gov/facilities/nursing/complaints.htm>
 - Call 1-888-201-4563
 - For Adult Care or Assisted Living Facilities:
 - Call 1-866-893-6772

ACF Resident Right: Manage Finances

ACF Resident Rights

- The right to manage your own financial affairs
- Adult homes must offer banking services to anyone who gets SSI and often offer these services to others as well.
- Access to your money at least four hours a day, five days a week. A schedule must be posted in the home and may not be changed without five days' advance notice.
- Account statements at least every three months and upon request

Facility Duties

- Financial case management services including helping the resident access benefits (including one time benefits) and banking, income maintenance, and assistance resolving financial issues.

Adult Care Facility “Dear Administrator Letter”

- Basic Adult Care Facility resident rights for EIPs largely the same as Nursing Home resident rights
- Guidelines issued by the NYS Department of Health to Adult Care Facilities for Economic Impact Payments
- Available online at the following link:
https://health.ny.gov/facilities/adult_care/dear_administrator_letters/docs/2020-06-12_covid-19_economic_impact_payments.pdf

next 12 months. If the resident and the ACF agree to deposit the funds into the resident’s personal needs account, the resident must be given the access to these funds to spend it as the resident chooses for his or her sole benefit.

Department regulations direct that ACF residents have the right to manage their own financial affairs (18 NYCRR §§ 487.5, 488.5). If the ACF accepts the resident’s impact payment for safekeeping, the ACF must adhere to Department regulations regarding storing resident funds and valuables, including access to such funds and valuables, as set forth in 18 NYCRR § 487.6 (adult homes) and § 488.6 (enriched housing).

CELJ FAQ for ACF Residents: <https://elderjusticenyc.org/wp-content/uploads/2021/01/Fact-Sheet-Stimulus-Check-Payments-and-Adult-Care-Facility-Residents.pdf>

Useful Informational Tools:

- **Care Compare Website** (<https://www.medicare.gov/care-compare/>)
- **NYS Department of Health Profiles**
(https://profiles.health.ny.gov/nursing_home/#5.4/42.868/-76.809)
- **Long Term Care Community Coalition**
 - (<https://nursinghome411.org/>)
- **Our informational resources page**
(<https://elderjusticenyc.org/resources/long-term-care-resources/>)
 - Includes fact sheets on Economic Impact Payments and other useful materials like our nursing home resident rights guide

2021 Virtual Elder Law Day

Summer Series

SESSION 5

KNOW YOUR RIGHTS - ENTERING A SKILLED NURSING FACILITY FOR SHORT-TERM REHABILITATION

Our presentation will provide attendees the information needed to fully understand their rights, with a focus on: care planning, discharge planning, visitation, and staffing. Attendees will be provided the tools needed to effectively advocate for their rights and/or the rights of a loved one. Attendees will receive handouts with information on these rights that will reinforce the tools needed to effectively respond and where to turn for assistance.

Lindsay Heckler, Esq.
Center for Elder Law & Justice



Bria Lewis, Esq.
Center for Elder Law & Justice



27 July 2021 | 10 am | Tuesday

Register at erie.gov/eld

Watch here: https://www.youtube.com/watch?v=XZo_0mtGvOc

Senior Legal Advice Helpline

- Provides brief legal services over the phone free of charge to individuals aged 55+ regardless of income or resources
- Answers to brief legal questions
- Referrals to full-scope legal resources when needed
- Live calling hours
 - M-F 9:00am to 11:00am
 - Phones are answered by a licensed attorney
- Voicemail and email requests for assistance
 - Licensed attorneys return voicemails and emails within 2-3 business days
- Contact Information (toll free)
 - 1-844-481-0973 for live calling hours and assistance via voicemail
 - helpline@elderjusticenyc.org for assistance via email

Legal Risk Detector App

- The app is a web-based legal health “check-up” tool that allows medical personnel, social workers, and other allied professionals to screen older adults for common legal issues.
- Older adults may also use the app to self-screen for risk of potential legal problems.
- The app offers referrals to legal resources if needed.
- <https://probononet.neotalogic.com/a/riskdetectorny>

CELJ Contact Information

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Niagara Office:

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Presentation Survey

<https://elderjusticenyny.org/participant-survey/>